## DISCUSSION.

### The Divorce Laws of England and Wales.

My attention has been called to the article on this subject by Mrs. Bosanquet which was published in this Journal in July, 1913. Her treatment of it seems to me highly unsatisfactory. I cannot but think that her remarks show symptoms of the fatigue often noticeable in those who have a reputation for progressiveness to maintain when they tackle a new question. She has not succeeded in understanding this question except through the spectacles of those who signed the Minority Report. For example, she is content to quote their remark: "The great majority of experts on mental diseases were very decidedly opposed to the proposal to make insanity a ground of divorce." This statement is quite erroneous. If Mrs. Bosanquet had carefully read the Minority Report or analyzed the evidence, she would have ascertained that of the answers obtained by Sir George Savage from eighty-two medical officers of asylums, fifty-one were in favor of insanity being a ground of divorce, twenty-nine were against, and two were indifferent. Of the total number of medical men whose opinions were obtained, sixty-three were in favor and only thirty-six against. All these gentlemen possess an expert knowledge of mental diseases. Yet these being the figures, she writes that the recommendation as to insanity is against the evidence! Again relying on the Minority Report, she praises the system of separation orders, apparently without even reading the carefully prepared evidence of the Mother's Union, which entirely and inadvertently gives away the case for separation orders. She writes very confidently of reconciliation without appearing to realize that it is more often than not due to the wife's difficulty in obtaining the maintenance which the order is supposed to secure. She entirely ignores the vast number of irregular unions and crimes due to the system.

This existing difficulty as to obtaining maintenance is alleged as a reason for denying the remedy of divorce to a deserted wife, as if *all* deserted wives were poor or too unattractive to have the opportunity of remarriage. A deserted wife cannot be worse off than she is now; why should she not be given the possibility, and in many cases probability, of a better fate?

Mrs. Bosanquet argues that the marriage tie should be permanent and indissoluble without reflecting that where one party has broken every single vow which she so deeply venerates, the other party need scarcely feel the vows in question particularly binding. She writes as if marriage in the past had been more permanent than it is to-day, whereas in medieval Europe it was far more uncertain than in the modern world. She would seem not to have heard of the ecclesiastical facilities for annulling Catholic marriage, many gross examples of which are to be found even now in Catholic states where there is no divorce.

We are told that the more sensitive to cruelty we become, "the more we shall live for the pleasure and convenience of the moment." Cruelty, if made a cause for divorce, would certainly be of a graver kind than to-day, when it is,—often collusively,—thrown in with adultery to give an injured wife a case for divorce; nor need a higher standard of civilization destroy the loyalty that distinguishes the affections of those spouses who are not unreasonably and tyrannically chained together.

From a public point of view, marriage is a business contract which can only be carried out by partners who are capable of coöperation. It is their duty to use every effort to coöperate, but coöperation is impossible if, *e. g.,* one of the spouses deserts the other and cannot be found, or makes an attempt on the other spouse's life, or habitually and grossly outrages the other spouse's feelings, or infects the other with a venereal disease and conceals the fact so that it becomes well-nigh incurable. I take merely hackneyed instances of what goes on every day.

Mrs. Bosanquet writes as if a husband can go on being divorced all his life; but even a millionaire cannot afford more than three divorces, having regard to the claims of his past wives for alimony. Why she should seriously quote Mr. Hewlett's evidence to the exclusion of far more important witnesses, I do not know, but I need only refer any readers who may be puzzled by them to some remarks of mine on the subject of "Divorce by Consent," in the *Fortnightly Review* for May, 1913.

Everyone who is not a lawyer is fond of saying that "Hard cases make bad law"; if *one* hard case can be relieved, it should be relieved, nor is there a single sentence in Mrs. Bosanquet's article to indicate what is the "suffering" to be caused by the legislation recommended by the Majority Report.

In conclusion, Mrs. Bosanquet might do well to explain

whether she wishes to abolish the existing divorce laws. From her remarks about vows it would seem that she opposes all divorce of any kind whatsoever, and if so, it seems odd that she should concern herself with divorce-law reform.

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## BOOK REVIEWS.

HIGHER NATIONALITY: A Study in Law and Ethics. An Address delivered before the American Bar Association at Montreal on September 1, 1913. By Viscount Haldane of Cloan, Lord Chancellor of Great Britain. London: John Murray, 1913. Pp. 45.

Towards the close of this elevated and masterly address, Lord Haldane avows, though in no tone of apology, that he is aware that his discourse has led the American Bar Association into regions which might "seem to belong more to ethics than to law." And it is good that, with the printed word before them, the reading world should be in a position to share the gratitude of the lawyers of the United States and Canada for his guidance. Neither short nor easy is the path that leads from what the world is all too prone to dismiss as the arid and unspeculative domain of law courts and legal practice to high discourse on *Sittlichkeit,* General Will, and International Obligation. Whole mountain ranges may seem to lie between. But these are impotent to stop Lord Haldane. With characteristically large outlook and confident step, and by the aid of what philosophers will recognize as sound Hegelian engineering, he travels serenely on his way with so much reasonableness, not unadorned at times by strokes of humor and eloquence, that even the most cut-and-dried of lawyers must have found himself conducted, not perhaps without astonishment, into a country so vastly more spacious than that from which he had set out. We cannot remember an instance in which "a lawyer speaking to lawyers,"—for so the Lord Chancellor styles himself,—has performed so notable an achievement.

It is fitting that "a lawyer speaking to lawyers" should begin with law; and it is with the nature and growth of com-